No. 55 and No. 376

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, *Petitioner*
v.
ALLEN KAISER
and
COMMISSIONER OF INTERNAL REVENUE, *Petitioner*
v.
MOSE DUBERSTEIN and SYLVIA DUBERSTEIN

No. 55
No. 376

On Writs of Certiorari to the United States Courts of Appeals for the Seventh and the Sixth Circuits

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF MRS. BERNICE CURRY MYERS

TOGETHER WITH BRIEF AMICUS CURIAE ON BEHALF OF MRS. BERNICE CURRY MYERS

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February 20, 1960

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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UNITED STATES OF AMERICA, *Petitioner* v. ALLEN KAISER	No. 55
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1. Motion is hereby made for leave to file in Nos. 55 and 376 a Brief Amicus Curiae on behalf of Mrs. Bernice Curry Myers. The proposed Brief Amicus Curiae is annexed.

2. Written consents from the taxpayers' attorneys in both No. 55 and No. 376 have been lodged with the

Clerk. The Solicitor General has advised he does not assent, adding that if a motion for leave to file is submitted, then the Government will not file objection; but he requested that his letter be included in the Motion so the Court might know his reasons for withholding consent.* Those reasons should not prevail in the present circumstances.

3. Nos. 55 and 376 (together with *Stanton* v. *Commissioner*, No. 546) all raise fundamental questions as to the distinctions between gift and income under the federal tax laws.

4. Over the past decade there has been a considerable amount of litigation involving questions whether voluntary payments made by employers to widows of deceased employees were to be considered as gift or income. The great bulk of these cases have been decided in favor of the taxpayer, the courts holding the particular payments to be gift, not income. In deciding for the taxpayer in case after case, the courts have relied upon general considerations concerning what is "gift" and what is "income"; upon criteria expressed in prior judicial determinations, such as *Bogardus* v. *Commissioner*, 302 U.S. 34; and upon ordinary common sense and common understanding. A solid consensus has been reached; by now, more than thirty judicial determinations hold that voluntary payments made by employers to widows constituted gift and not taxable income.** In fact, the consensus of judicial determinations finally became so strong, and the successive de-

* Accordingly, the Solicitor General's letter is attached as an exhibit to this Motion.

** Such judicial determinations are listed in the Appendix to the proposed Brief Amicus Curiae.

feats for the Government in this type of litigation so numerous, that in mid-1958, the Internal Revenue Service issued an official announcement (Technical Information Release No. 87, dated August 25, 1958) that it would no longer contest this type of case arising under the 1939 Internal Revenue Code "unless there is clear evidence that they [the voluntary payments to the widow] were intended as compensation for services, or where the payments may be considered as dividends"; it reserved its position with respect to cases arising under the 1954 Internal Revenue Code.

5. None of the three cases now before this Court for argument on the merits (Nos. 55, 376 and 546) involves, on its facts, an employer's voluntary payment to the widow of a deceased employee. But the Government's discussion of the law has included references to that line of decisions (see Government's Brief in No. 55, at pages 26-27 and 37; Government's Petition for Certiorari in No. 376, at pages 6-7 and 11; Government's Brief in No. 376, pages 11-12); and the various criteria which the Government is suggesting might, if accepted without qualification and modification, have an important impact on cases of that type. If fundamental questions relating to the distinctions between gift and income are to be canvassed, opportunity should be afforded to a taxpayer directly interested to bring to the Court's attention the extensive history which has been developed with respect to voluntary payments to widows of deceased employees. Any general criteria being proposed by the Government for differentiating between gift and income should be considered and tested in the light of this important category of cases. For this purpose, it is submitted, a taxpayer so situated should be heard from.

6. Mrs. Myers is a taxpayer so situated, with a direct interest in this matter. In 1956, shortly after her husband's death, Mrs. Myers received a sum of money from her husband's employer, a non-profit organization, the Committee for Economic Development (CED); this sum was a wholly voluntary payment by CED to her as an expression of sympathy and gratitude, and was contemporaneously described by the Secretary of the CED as a gift to Mrs. Myers. In connection with her tax return for 1956, which is still pending before Internal Revenue Service, her position is that this sum was clearly a gift from CED to her, and not income. In connection with the cases now before this Court, her position is that any formulation of criteria for distinguishing between gift and income should give appropriate recognition to, and should leave undisturbed, the long and settled line of judicial decisions which have held that voluntary payments by employers to widows of deceased employees are, under reasonably comparable circumstances, to be treated as gifts and not income to the widow.

7. The fact that her case is still before Internal Revenue Service, rather than in some appellate court, should not be deemed an obstacle to the filing of the proposed Brief Amicus Curiae. Mrs. Myers' tax return is a pending matter with the Government; her interest in the outcome is equally direct, no matter at what level it is pending. The proper safeguarding of her interests, as well as due regard for the interests of other taxpayers with comparable matters pending, underscores the importance of placing the pertinent materials before the Court in connection with any consideration now to be given to formulating, or perhaps reformulating, fundamental criteria for distinctions be-

tween gift and income. The proposed Brief Amicus Curiae will help to assure that a full picture on these matters is available to the Court; and it seems unlikely that this will otherwise be done.

Respectfully submitted,

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Washington 6, D. C.
Attorney for Mrs. Bernice Curry Myers

February 20, 1960

EXHIBIT TO MOTION

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

February 4, 1960

5-85-993
5-9954
5-52-6407

Bennett Boskey, Esq.
Volpe, Boskey and Skallerup
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Washington 6, D. C.

Re: United States v. Kaiser, No. 55
Commissioner of Internal Revenue
v. Duberstein, No. 376
Stanton v. Commissioner, No. 546
Oct. Term, 1959

Dear Mr. Boskey:

I have your letter of January 28 in which you request consent to the filing of a brief *amicus curiae* in these cases on behalf of Mrs. Bernice Curry Myers.

This Office has carefully considered your request, and I regret that we cannot assent to it. As you are aware, this Office follows a liberal policy, consistent with its obligations to the Supreme Court, in passing on requests for consent to the filing of *amicus curiae* briefs. Such consent is generally given when the applicant has a substantial interest in the outcome of a case, and the proposed brief could assist the Court by presenting relevant arguments or materials which might not otherwise be submitted. In no instance does consent depend on whether the applicant's position is in accord with that of the Government as a litigant in the particular case before the Court.

As your letter correctly observes, the above cases now pending before the Court raise fundamental questions as

to the distinction between gift and income under the federal tax laws. Like most tax cases in which the Court grants certiorari, they are being reviewed because of the substantial importance of the questions involved and the need for having them authoritatively determined. The decisions which the Court renders in tax cases usually have binding consequences for thousands if not millions of taxpayers. For that reason the Government does not consider that a taxpayer who might be affected by the Supreme Court's decision in a pending case has a sufficient interest to justify his appearing as *amicus curiae* in that case. If that were deemed a sufficient interest, the result might be to deluge the Court with a mass of *amicus* briefs.

As you know, the Government generally consents to the filing of an *amicus* brief on behalf of a trade (or comparable) organization representing a large number of similarly situated taxpayers, or on behalf of a particular taxpayer having an identical claim in another case awaiting adjudication by a lower appellate court, where he seeks to submit relevant arguments or materials not adequately presented by the parties. Your client's interest in the pending cases, however, appears to be more tenuous. The facts to which you refer in your letter appear to fall within the general category of so-called "widow's bonus" cases. None of the three cases before the Supreme Court involves such a factual situation. However, I would not withhold consent for that reason alone.

According to your letter, your client has submitted a tax return, together with a supporting memorandum of counsel, claiming that a certain sum of money received from her late husband's employer was a gift and not income. As your letter points out, this claim has not been finally acted upon, one way or the other, by the Internal Revenue Service, nor have the full facts and circumstances been developed. At this stage one cannot tell whether the Service will or will not uphold your client's claim, or whether there

are circumstances relevant to the transaction other than those stated in your letter. If the facts were that your client's claim had been rejected by the Internal Revenue Service, that litigation had ensued, and that it had progressed to the point where any issues of fact had been distilled out of the case and only issues of law remained which would be governed by the Supreme Court's decision in the pending cases, your request would then possess a solidity which we feel it now lacks.

For all that now appears, your client's claim may eventually be sustained administratively. Or it may be that the controlling facts of her case will turn out, at least in the Government's view, to be quite different from those you now assert. Moreover, the very filing of an *amicus* brief in the Supreme Court on behalf of your client, while her case is still in the earliest administrative stages, would inevitably give rise to implications or impressions concerning the Government's position on her case or class of case which might turn out to be wholly unfounded; and this could be true even though it were explicitly stated that no final administrative determination had yet been reached.

In short, we believe that your client's claim is not at the present time a matter for consideration by the Supreme Court together with the three pending cases. We do not think that either the Government or the taxpayers in these cases should have to deal with a fourth set of "facts" not actually before the Court. If the general "widow's bonus" class of cases presents considerations which are relevant to the issues of law involved in the cases before the Court, the parties on both sides can deal with them. In this connection, I understand that you are unwilling to omit discussion of the particular facts of your client's claim, as you see them, or to confine your brief to a general discussion of the "widow's bonus" class of cases as they affect the pending cases. As I have already indicated, the situation would be different if the request here were made on behalf of a

taxpayer involved in a "widow's bonus" case now pending in a court of appeals where it would be clear what the full facts are and what the Government's position is in relation to those facts.

If you should decide to submit a motion for leave to file your proposed *amicus curiæ* brief, the Government will not file an objection. However, in such event, in order that the Court may know my reasons for withholding consent, I request that you include a copy of this letter in your motion.

Sincerely yours,

s. J. LEE RANKIN
J. Lee Rankin
Solicitor General

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QUESTIONS PRESENTED

The ultimate question presented in each of the two cases is whether a certain type of item (strike benefits in No. 55; a Cadillac automobile in No. 376) received by the taxpayer is to be included in or excluded from gross income.[1] This in turn depends largely upon dis-

[1] Another such question is presented in No. 546, *Stanton* v. *Commissioner of Internal Revenue*, which the Court has set down for argument to follow these two cases.

tinctions between "gift" and "income", and in this connection the Government is urging various criteria upon the Court. Important questions are accordingly presented as to the applicable criteria.

INTEREST OF AMICUS CURIAE

Mrs. Myers has a direct interest in the proper formulation of the criteria for distinguishing between gift and income under the federal tax laws. Her 1956 income tax return, which involves exactly such a question, has now been pending unresolved before Internal Revenue Service for about three years; no final position has yet been taken by Internal Revenue Service with respect to her case.

The facts of her case are simple and clear-cut. Mrs. Myers' husband, Dr. Howard B. Myers, had been continuously employed since 1943 by the Committee for Economic Development (CED) in highly responsible positions, first as Associate Director of Research and then as Director of Research. The CED is a non-profit, educational, economic research organization, established in 1942, with offices in New York City and Washington, D. C.; and it is a tax-exempt organization under the federal income tax laws. Dr. Myers' annual salary, from 1951 on, was $25,000 per year or higher. On February 20, 1956, at a time when Dr. Myers was suffering from an illness which made his death imminent, the Executive Committee of CED's Board of Trustees, being advised of Dr. Myers' serious illness, considered a recommendation that in the event of his death a voluntary payment be made to his family as an expression of sympathy and gratitude. A Resolution was thereupon adopted, authorizing that in the event of Dr. Myers' death the CED should pay "to his wife, if liv-

ing, and otherwise to his children, as an expression of the Committee's sympathy and gratitude, an amount equal to the salary that would have been paid for the balance of the current year had death not occurred". Shortly thereafter, on March 9, 1956, Dr. Myers died at age 55. On March 28, 1956, the Secretary of the CED sent to Mrs. Myers' then attorney a copy of the Resolution, stating in his letter that this was the Resolution, "relative to the gift to" Mrs. Myers, and said the CED's New York office would that day send Mrs. Myers the full amount. By separate letter also dated March 28, 1956, the CED sent Mrs. Myers a check in the amount of $21,643.12, payable to her with a letter stating:

> "Enclosed please find the check of the Committee for Economic Development in the amount of $21,643.12. This is being sent to you in accordance with a resolution adopted by the Executive Committee of CED and instructions given by Mr. Frazar Wilde, Chairman of the Research and Policy Committee, and is intended as an expression of sympathy in the loss of your husband and of gratitude for the outstanding work he performed as Director of Research for the Committee.
>
> "The amount of the check equals the salary that would have been paid to Howard from March 9 to the end of the current year.
>
> "Our warm regards and best wishes accompany this voluntary payment."

Mrs. Myers duly filed with Internal Revenue Service a Donee's Information Return (Form 710) reporting this gift from CED. On her 1956 income tax return she stated as a matter of information that CED had made this wholly voluntary payment to her; that she had been advised that, in the opinion of counsel, this

was a gift from CED to her, and not income; and that she had accordingly filed a Donee's Information Return with respect to it. In March 1958 a Memorandum in support of this position was submitted to Internal Revenue Service, which still has the matter under consideration.

In connection with the cases now pending before this Court, the position of the Amicus Curiae is that any formulation of criteria for distinguishing between gift and income should give appropriate recognition to, and should leave undisturbed, the long and settled line of judicial decisions which have held that voluntary payments by employers to widows of deceased employees are, under reasonably comparable circumstances, to be treated as gifts and not income to the widow.

ARGUMENT

Even if the matter were wholly one of first impression, it would be clear that in a case such as that of Mrs. Myers, the sum turned over to the widow by her deceased husband's employer is a gift to her and hence wholly excludable from gross income. Proposed criteria for distinguishing between gift and income are inadequate or incorrect if they might becloud the result in a case like this.

Moreover, the matter is by no means one of first impression. It has a long history in hard-fought litigation, hard-fought because for an extensive period the Internal Revenue Service maintained a totally intransigeant attitude in the face of successive court defeats. Comparable situations have been considered on numerous occasions by the Tax Court and by various federal courts. Many decisions have been rendered on the subject. There are over thirty of them (see Appendix

to this Brief) which constitute an overwhelming body of precedent in support of the taxpayer's position in such cases.

Indeed, for over ten years matters of this nature have been coming before the Tax Court, and have been uniformly decided in favor of the taxpayer where the payment to the widow is shown to be voluntary and not compensation for the services which the deceased employee had rendered.

The line of decisions in the Tax Court begins with *Louise K. Aprill*, 13 T.C. 707 (1949), where a corporation had voluntarily given $4,000 to the widow of its deceased president, "in recognition of the services" which had been rendered by the deceased president. Judge Opper examined the facts in the light of the simple common sense of the situation, as well as with due regard to what this Court had said in *Bogardus* v. *Commissioner*, 302 U.S. 34, 44 (1937), to the effect that "A gift is nonetheless a gift because inspired by gratitude for the past faithful service of the recipient." Judge Opper concluded that the amounts paid to the widow were of a gratuitous character and hence excludable from the widow's gross income.[2] Similar decisions were rendered in *Alice M. Macfarlane*, 19 T.C. 9 (1952)[3] and then in *Estate of Arthur W. Hellstrom*, 24 T.C. 916 (1955), where Judge Rice's opinion concludes by stating (24 T.C. at 920):

[2] The Commissioner published his express acquiescence to *Aprill* in 1950, see 1950-2 C.B. page 1, although in November 1957 (which was long after the CED made its gift to Mrs. Myers) he withdrew such acquiescence and substituted nonacquiescence therefor, see 1957-2 C.B., page 8.

[3] The Commissioner published his partial acquiescence to *Macfarlane* in 1953, see 1953-1 C.B., page 5.

> "We think the controlling facts here which establish the payment in question as a gift are that the payment was made to petitioner and not to her husband's estate; that there was no obligation on the part of the corporation to pay any additional compensation to petitioner's husband; it derived no benefit from the payment; petitioner performed no services for the corporation and, as heretofore noted, those of her husband had been fully compensated for. We think the principal motive of the corporation in making the payment was its desire to do an act of kindness for petitioner. The payment, therefore, was a gift to her and not taxable income."

And there had been at least three additional Tax Court decisions to the same effect (see list in Appendix to this Brief) by the time—early in 1956—when the CED decided to make this voluntary payment to Mrs. Myers. Subsequent decisions of the Tax Court provided the strongest further confirmation of the doctrine (again, see list in Appendix to this Brief). The unanimity of view found in these numerous decisions of the Judges of the Tax Court has been paralleled by similar unequivocal decisions in the federal courts throughout the country; these include not only a large number of district courts, but also the Courts of Appeals for the Sixth and Fourth Circuits (the federal court decisions are likewise included in the list in the Appendix to this Brief).

This overwhelming body of precedent, both in the Tax Court and in the federal courts throughout the country, establishes that the law on this subject has become settled and has remained settled, despite the vigorous efforts which the Internal Revenue Service made to overturn it. Indeed, the isolated cases in

which the Government has prevailed in this general area are so different on their facts from the usual run of cases (and so different from the specific case of Mrs. Myers) that they strengthen, rather than impair, the position of the taxpayer in a case such as Mrs. Myers'.'

The Government's successive defeats in this type of litigation finally led the Internal Revenue Service in August 1958 to cease contesting the point in cases arising under the 1939 Internal Revenue Code, so that it became unnecessary for taxpayers so situated to be forced to obtain judicial determinations to vindicate their position. The abandonment of its position was announced by the Internal Revenue Service in Technical Information Release No. 87, dated August 25, 1958, which reads as follows (1958 CCH Standard Federal Tax Reports ¶6662):

> "In view of a number of adverse court decisions in cases involving voluntary payments to widows by their deceased husbands' employers, the Internal Revenue Service today announced that it will no longer litigate, under the Internal Revenue Code of 1939, cases involving the taxability of such

---

[4] Thus, in *Fisher* v. *United States*, 129 F. Supp. 759 (D. Mass. 1955), the resolution of the Association had specified that the widow be paid "the balance of the retirement compensation", which was a definite sum the Association had actually voted to pay to its employee and had started to pay to him before his death; this vital distinction on the facts was emphasized by the Tax Court in its opinion in *Elizabeth R. Matthews*, 15 TCM 204, 206 (1956). Similarly, in *Simpson* v. *United States*, 261 F. 2d 497, (7th Cir. 1958), certiorari denied, 359 U.S. 944 (1959), the Court found that the payment to the widow was made pursuant to a long-established plan, evidenced by a pre-existing corporate resolution and consistently followed by the corporation, which had been established for the purpose of encouraging living executives to continue in their employment by the corporation, and that the corporation did not intend to make a gift to the widow.

payments unless there is clear evidence that they were intended as compensation for services, or where the payments may be considered as dividends. Payments which will be considered 'voluntary' in applying this policy do not include payments made pursuant to a contract or otherwise binding obligation or pursuant to a plan or statute in effect before the husband's death.

"In line with this new litigation policy, field offices of the Service will similarly dispose of 1939 Code cases not yet in litigation.

"The Service emphasized that this announcement represents a litigation policy, implemented by consistent administrative action, pertaining to 1939 Code cases only. The position of the Service with respect to cases in this area arising under the Internal Revenue Code of 1954 involves other considerations and will be made the subject of a future announcement."

It will be noted that in this Release, the Internal Revenue Service reserved its position with respect to cases arising under the 1954 Internal Revenue Code. Presumably this is because the Internal Revenue Service wished to be free to contend that, in some way or other, the result was to be affected by the addition, in the 1954 Code, of Section 101(b), 26 U.S.C. § 101(b), which provides a $5,000 exclusion from gross income for "amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee". This new subsection brought into the Code a $5,000 exclusion for death benefits which otherwise would have been income (such as the payments made in the *Fisher* and *Simpson* cases, referred to in note 4 above). In no way, however, did it transmute into in-

come the type of voluntary payments, such as made in Mrs. Myers' case and the many other cases which have been referred to, which were otherwise clearly recognized as gifts. There is not a syllable in the legislative history of the 1954 Code which would warrant imputing to Congress an intention to make any such change. See Jennings, *Voluntary Payments to Widows of Employees*, (1959) 37 Taxes 530, 537-538 and 559. In this respect the settled and established law as to gifts remained wholly unchanged by the 1954 Code.[5] The applicable provision of Section 102(a) of the 1954 Code, excluding gifts from gross income, is substantially identical to the comparable provision in Section 22(b)(3) of the 1939 Code, and taxpayers certainly should have been entitled to rely on this settled interpretation of the tax laws.

If the Government is dissatisfied with the solid doctrine which has been so plainly adjudicated by the courts in this area, then the Treasury Department is always able to appeal to the Congress to make a change in the law. It has not done so; and there is no reason to suppose that the Congress would be receptive to any such proposal. But whether such a change should or should not be made for future years is certainly something to be determined a matter of legislative policy.

From the references to this line of cases which appear in the papers filed by the Government in Nos. 55 and 376,[6] it is not entirely clear whether the Govern-

[5] The only litigated decision under the 1954 Code thus far reported so holds. *Reed* v. *United States*, 59-1 USTC ¶ 9264 (W.D. Ky.). There is an ill-considered dictum to the contrary in *Rodner* v. *United States*, 149 F. Supp. 233, 237 (S.D. N.Y. 1957).

[6] Government's Brief in No. 55, pages 26-27, 37; Government's Petition for Certiorari in No. 376, pages 6-7, 11; Government's Brief in No. 376, pages 11-12.

ment is now intending or hoping to make some inroads on this settled line of judicial decisions. But the criteria which the Government is suggesting for distinguishing between gift and income seem inadequate, and may have some tendency to becloud what at least in this area has been settled and clear.

First, the Government's approach—exemplified particularly by its Brief in No. 55 (pages 26-34 thereof)—is to propose various restrictive rules which the Government suggests should each by itself be deemed sufficient to prevent a given transaction from being a gift. This involves excessive fragmentation of the transaction. For example, despite the argument which the Government seems to be making at pages 26-30, a man clearly may make a gift to his grandson, and still have some collateral "business reason" for thinking this is a good idea; a corporation clearly may make a gift to an engineering school, and still have some "business reason" which it thinks will also be served by doing so; a coal mining company may make an *ad hoc* gift to the destitute families of employees who have been killed in a mine disaster, and still have some "business reason" for feeling it is prudent to do so. The concepts of "gift" and a relevant "business reason" are by no means mutually exclusive. The Government is suggesting a dichotomy which is artificial, arbitrary, and an inadequate basis for the proper administration of the tax laws in this area.

Second, the main thrust of the criteria proposed in the Government's Brief in No. 376 has to do with the Government's argument that it is "motive" rather than "intent" which should be controlling in determining whether a particular transaction results in gift or income. To the extent that this would be something

more than a semantic exercise, it too seems by itself a totally inadequate basis for the administration of the tax laws. "Motive" may be one of many pertinent factors, when it is apparent what the motive was. But motive will often be obscure, and the search for it will then turn tax cases into psychiatric inquiries for which, one may suggest, the Internal Revenue Service is not particularly well equipped. Moreover, it seems a somewhat far-fetched reading of the tax laws to say, for example in Mrs. Myers' case, that the clearly expressed intention of CED to express its sympathy and gratitude is totally irrelevant, but that instead the inquiry must be made exclusively into motive.[7] And why indeed should it be totally irrelevant that the employer may have intended to, ~~and did,~~ carry out the transaction in full compliance with then existing Tax Court decisions determining such voluntary payments to a widow to be a gift?

It may well be that in Mrs. Myers' case the conclusion of gift, not income, would flow just as surely from some "motive" test as from a consideration of the clearly expressed intention. But no justification ap-

[7] Since the Government seems to have some preference (see Government's Brief in No. 376, pages 14-15) for the dissenting rather than the majority opinion in *Bogardus* v. *Commissioner*, 302 U.S. 34, it may be noted that the dissenting opinion there written by Mr. Justice Brandeis for four members of the Court states (302 U.S. at 45): "What controls is the intention with which payment, however voluntary, has been made." Moreover, the Government's recent brief in the Fourth Circuit, as quoted with approval in that Court's opinion in *Bounds* v. *United States*, 262 F. 2d 876, 882 (1958), stated: ". . . whether the payments in question represented income or gifts to the taxpayer cannot be answered by mere definitions or categories. Rather, it presents a problem to be decided in the light of all the facts and circumstances showing the intention of the parties, particularly that of the corporation-payor."

pears for complicating and beclouding this area of the tax laws by adopting as the exclusive criterion the obscure and restrictive "motive" test which the Government is suggesting.

CONCLUSION

In distinguishing between gift and income it is important to avoid inflexible, restrictive criteria which will prevent the transaction from being viewed in its entirety, or will interfere with the application of common sense, or will operate to unsettle particular types of transactions (such as voluntary payments to widows) where the law has been well settled and has been relied upon. The criteria being proposed by the Government in Nos. 55 and 376 are inadequate for the proper administration of the tax laws, and should not be accepted by the Court without sufficient modification and qualification.

Respectfully submitted,

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Attorney for Mrs. Bernice Curry Myers

February 20, 1960.

APPENDIX TO BRIEF AMICUS CURIAE.

List of Judicial Determinations Holding Voluntary Payments Made by Employers to Widows Constituted Gift and Not Taxable Income

A. Tax Court Decisions

1. Decision by Judge Opper in *Louise K. Aprill*, 13 T.C. 707 (1949)
2. Decision by Judge Harron in *Alice M. Macfarlane*, 19 T.C. 9 (1952)
3. Decision by Judge Tietjens in *Ruth Hahn*, 13 TCM 308 (1954)
4. Decision by Judge Rice in *Estate of Arthur W. Hellstrom*, 24 T.C. 916 (1955)
5. Decision by Judge Harron in *Estate of Ralph W. Reardon*, 14 TCM 577 (1955)
6. Decision by Judge Tietjens in *Marie G. Haskell*, 14 TCM 788 (1955)
7. Decision by Judge Atkins in *Elizabeth R. Matthews*, 15 TCM 204 (1956)
8. Decision by Judge Van Fossan in *Ethel G. Mann*, 16 TCM 212 (1957)
9. Decision by Judge Harron in *Estate of John Hekman*, 16 TCM 304 (1957)
10. Decision by Judge Tietjens in *Estate of Frank J. Foote*, 28 T.C. 547 (1957)
11. Decision by Judge Arundell in *Estate of John A. Maycann, Sr.*, 29 T.C. 81 (1957)
12. Decision by Judge Forrester in *Florence S. Luntz*, 29 T.C. 647 (1958)
13. Decision by Judge Fisher in *Alice D. Ryder*, 17 TCM 207 (1958)

14. Decision by Judge Tietjens in *Estate of Albert W. Morse*, 17 TCM 261 (1958)

B. Federal Court Decisions

15. Decision by Judge Grooms in *Black* v. *Davis*, 55-1 USTC ¶9361 (N.D. Ala.)

16. Decision by Judge Hall in *Slater* v. *Riddell*, 56-2 USTC ¶9892 (S.D. Cal.)

17. Decision by Judge Atwell in *Graves* v. *United States*, 56-2 USTC ¶10,034 (N.D. Tex.)

18. Decision by Judge Steckler in *Baur* v. *United States*, 57-1 USTC ¶9210 (S.D. Ind.)

19. Decision by Judge Steckler in *Bledsoe* v. *United States*, 57-1 USTC ¶9211 (S.D. Ind.)

20. Decision by the Sixth Circuit (Judges McAllister, Stewart and Cecil) in *United States* v. *Bankston*, 254 F. 2d 641 (1958), affirming decision by Judge Boyd in *Bankston* v. *United States*, 57-1 USTC ¶9626 (W.D. Tenn.)

21. Decision by Judge McColloch in *Jackson* v. *Granquist*, 57-2 USTC ¶9713 (D. Ore.)

22. Decision by Judge Darr in *Nixon* v. *United States*, 57-2 USTC ¶9982 (E.D. Tenn.)

23. Decision by Judge Dimock in *Rodner* v. *United States*, 149 F. Supp. 233 (S.D. N.Y. 1957)

24. Decision by Judge Tehan in *Friedlander* v. *United States*, 58-1 USTC ¶9182 (E.D. Wis.)

25. Decision by Judge Nordbye in *Linoff* v. *United States*, 58-1 USTC ¶9204 (D. Minn.)

26. Decision by Judge Whitehurst in *Neuhoff* v. *United States*, 58-1 USTC ¶9506 (D. Fla.)

27. Decision by Judge Brooks in *Hardy* v. *United States*, 58-2 USTC ¶9521 (W.D. Ky.)

28. Decision by Judge Cecil in *Carley* v. *United States*, 163 F. Supp. 429 (S.D. Ohio 1958)

29. Decision by Judge Boldt in *Jones* v. *Squire*, 58-2 USTC ¶9588 (W.D. Wash.)

30. Decision by Judge Hannay in *Bank of the Southwest National Association* v. *United States*, 165 F. Supp. 200 (S.D. Tex. 1957)

31. Decision by Judge Brooks in *Citizens Fidelity Bank & Trust Co.* v. *United States*, 164 F. Supp. 544 (W.D. Ky. 1958)

32. Decision by Judge Darr in *Campbell* v. *United States*, 58-2 USTC ¶9763 (E.D. Tenn.)

33. Decision by Judge Lederle in *Allinger* v. *United States*, 58-2 USTC ¶9949 (E.D. Mich.)

34. Decision by the Fourth Circuit (Judges Sobeloff, Soper and Haynsworth) in *Bounds* v. *United States*, 262 F. 2d 876 (1958)

35. Decision by Judge Shelbourne in *Reed* v. *United States*, 59-1 USTC ¶9264 (W.D. Ky.)

36. Decision by Judge Robinson in *Greenberg* v. *United States*, 59-2 USTC ¶9676 (D. Neb.)